FCC REPORT TO CONGRESS
AS REQUIRED BY THE ORBIT ACT
ELEVENTH REPORT

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By the Commission:

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ELEVENTH REPORT

This report is submitted in accordance with the requirements of the Open-Market Reorganization for the Betterment of International Telecommunications Act (the "ORBIT Act")[1] which has an objective of ensuring that INTELSAT and Inmarsat are privatized in a pro-competitive manner. To this end, the Act requires the submission of annual reports to Congress as noted below.

Section 646 states:

> (a) ANNUAL REPORTS - The President and the Commission shall report to the Committees on Commerce and International Relations of the House of Representatives and the Committees on Commerce, Science, and Transportation and Foreign Relations of the Senate within 90 calendar days of the enactment of this title, and not less than annually thereafter, on the progress made to achieve the objectives and carry out the purposes and provisions of this title. Such reports shall be made available immediately to the public.
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> (b) CONTENTS OF REPORTS - The reports submitted pursuant to subsection (a) shall include the following:
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> (1) Progress with respect to each objective since the most recent preceding report.
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> (2) Views of the Parties with respect to privatization.
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> (3) Views of the industry and consumers on privatization.
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> (4) Impact privatization has had on United States industry, United States jobs, and United States industry's access to the global marketplace.[2]

I. Progress as to Objectives and Purposes

The purpose of the ORBIT Act is "to promote a fully competitive global market for satellite communication services for the benefit of consumers and providers of satellite services

[1] 47 U.S.C. § 701 (2000).

[2] 47 U.S.C. § 765(e).

and equipment by fully privatizing the intergovernmental satellite organizations, INTELSAT[3] and Inmarsat."[4]

The ORBIT Act, as originally passed in 2000: (1) mandates the privatization of INTELSAT and Inmarsat; (2) establishes criteria to ensure a pro-competitive privatization; (3) requires the Commission to determine whether INTELSAT, Inmarsat, and the INTELSAT spin-off New Skies Satellites N.V. ("New Skies"), have been privatized in a manner that will harm competition in the United States; (4) requires the Commission to use the privatization criteria specified in the ORBIT Act as a basis for making its competition determination; and (5) directs the Commission to "limit through conditions or deny" applications or requests to provide "non-core" services to, from, or within the United States if it finds that competition will be harmed.[5] The Act provides for certain exceptions to limitations on non-core services in the event of such a determination. The Act also prohibits the Commission from authorizing certain "additional" services pending privatization consistent with the criteria in the Act.[6] In addition, the Act directs the Commission to undertake a rulemaking proceeding to assure users in the United States the opportunity for direct access to the INTELSAT system. In October 2004, Congress amended the ORBIT Act, adding Sections 621(5)(F) and (G), to provide a certification process as an alternative to the initial public offering ("IPO") requirements under Sections 621(5)(A) and (B). In July 2005, Congress further amended the ORBIT Act, striking certain privatization criteria for Intelsat separated entities, removing certain restrictions on separated entities and successor to Intelsat and for other purposes.[7]

The Commission made its first report to Congress on its actions to implement the ORBIT Act on June 15, 2000, following enactment of the Act on March 17, 2000.[8] The Commission

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[3] The intergovernmental satellite body INTELSAT later created Intelsat LLC, a privately-held U.S. corporation that is now the licensee of those satellite assets formerly held by INTELSAT. *See* discussion at page 4, *infra*.

[4] 47 U.S.C. § 761 NOTE.

[5] The Act defines "non-core" services as "services other than public-switched network voice telephony and occasional-use television" with respect to INTELSAT, and as "services other than global maritime distress and safety services or other existing maritime or aeronautical services for which there are not alternative providers" with respect to Inmarsat. 47 U.S.C. § 769(a)(11).

[6] The Act defines "additional" services as direct-to-home ("DTH") or direct broadcast satellite ("DBS") video services, or services in the Ka or V bands" for INTELSAT and as "those non-maritime or non-aeronautical mobile services in the 1.5 and 1.6 GHz band on planned satellites or the 2 GHz band" for Inmarsat. 47 U.S.C. § 769(a)(12).

[7] Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *as amended*, Pub. L. No. 107-233, 116 Stat. 1480 (2002), *as amended,* Pub. L. No. 108-228, 118 Stat. 644 (2004), *as amended,* Pub. L. No. 108-371, 118 Stat. 1752 (October 25, 2004), *as amended,* Pub. L. No. 109-34, 119 Stat. 377 (July 12, 2005). In the July 2005 amendment to the ORBIT Act, Congress added a requirement that the Commission submit to Congress a separate annual report that analyzes the competitive market conditions with respect to domestic and international satellite communications services. The first Annual Report was released on March 26, 2007. *FCC Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, FCC 07-34, IB Docket No. 06-67 ("*Satellite Competition Report*").

[8] *FCC Report to Congress as Required by the ORBIT Act,* 15 FCC Rcd 11288 (2000).

made its second report on June 15, 2001;[9] its third report on June 14, 2002;[10] its fourth report on June 11, 2003;[11] its fifth report on June 15, 2004; [12] its sixth report on June 15, 2005;[13] its seventh report on June 15, 2006;[14] its eighth report on June 15, 2007;[15] its ninth report on June 13, 2008, [16] and its tenth report on June 15, 2009.[17]

A. Commission Actions and Activities

Since August of 2000, the Commission has undertaken a number of actions either required by the ORBIT Act, or related to its objectives and purposes. The Commission has taken the actions described below to ensure that INTELSAT, Inmarsat, and New Skies have been privatized in a pro-competitive manner, consistent with the privatization criteria of the ORBIT Act.[18] The Commission has also taken actions to implement certain deregulatory measures in the ORBIT Act.[19]

INTELSAT

- In August 2000, the Commission granted conditional licensing authority to Intelsat LLC, ("Intelsat"), a separate, privately held U.S. corporation, created by INTELSAT to hold U.S. satellite authorizations and associated space segment assets.[20] Under this licensing authority, the Commission permitted Intelsat's licenses to become effective upon "privatization," meaning the transfer of INTELSAT's satellites and associated assets to Intelsat and the transfer of its International Telecommunications Union ("ITU") network filings to the U.S. registry. Intelsat received conditional U.S.

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[9] *FCC Report to Congress as Required by the ORBIT Act,* 16 FCC Rcd 12810 (2001).

[10] *FCC Report to Congress as Required by the ORBIT Act,* 17 FCC Rcd 11458 (2002).

[11] *FCC Report to Congress as Required by the ORBIT Act,* 18 FCC Rcd 12525 (2003).

[12] *FCC Report to Congress as Required by the ORBIT Act,* 19 FCC Rcd 10891 (2004).

[13] *FCC Report to Congress as Required by the ORBIT Act,* 20 FCC Rcd 11382 (2005).

[14] *FCC Report to Congress as Required by the ORBIT Act,* 21 FCC Rcd 6740 (2006).

[15] *FCC Report to Congress as Required by the ORBIT Act*, 22 FCC Rcd 11347 (2007).

[16] *FCC Report to Congress as Required by the ORBIT Act*, FCC 08-152 (2008).

[17] *FCC Report to Congress as Required by the ORBIT Act*, 24 FCC Rcd 8686 (2009).

[18] 47 U.S.C. §§ 761, 763, 763a, 763b, 763c, and 765g.

[19] 47 U.S.C. §§ 765 and 765d(1).

[20] Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 15 FCC Rcd 15460, *recon. denied,* 15 FCC Rcd 25234 (2000), *further proceedings,* 16 FCC Rcd 12280 (2001) ("*Intelsat Licensing Order"*).

authorizations for INTELSAT's existing satellites, planned satellites, and planned system modifications associated with INTELSAT's frequency assignments in the fixed satellite services ("FSS") C- and Ku-bands existing as of privatization.[21]

- Later in 2000, INTELSAT adopted plans to distribute shares in Intelsat to its Signatories on July 18, 2001.[22] In May 2001, the Commission found that, although the initial public offering (IPO) required under the privatization requirements of the ORBIT Act had not yet been completed, INTELSAT would privatize in a manner consistent with the non-IPO privatization provisions of the ORBIT Act, upon completion of its plans to distribute Intelsat shares to its Signatories.[23] INTELSAT later distributed shares to its Signatories, as it had planned.

- On July 28, 2003, Loral Satellite Inc. ("Debtor-in-Possession" or "DIP"), and Loral SpaceCom Corporation (DIP), and Intelsat North America, LLC filed an application seeking authority to assign five non-common carrier space station licenses to Intelsat North America. On February 11, 2004, the Commission granted authority to assign those licenses subject to certain conditions and limitations.[24] Loral was providing services, such as Direct-to-Home ("DTH"), that are "additional services" as defined

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[21] *Intelsat Licensing Order,* 15 FCC Rcd 15460. The conventional C-band refers to the 3700-4200/5925-6425 MHz frequency bands. Intelsat is also authorized to operate in the extended C-band frequencies 3625-3700/5850-5925/6425-6650 MHz on certain satellites at certain orbital locations. In addition, Intelsat is authorized to operate in the extended C-band frequencies 3420-3625 MHz on the Intelsat-805 satellite at 55.5º W.L. for service to non-U.S. locations. The 3420-3600 MHz portion of this frequency band is not a satellite band in the United States and is operated by Intelsat outside the United States subject to potential interference from worldwide shipborne U.S. military radar operations. The conventional Ku-band refers to the 11.7-12.2/14.0-14.5 GHz frequency bands. Intelsat is also authorized to operate in the extended Ku-frequency bands 10.95-11.2/11.45-11.7/12.5-12.75/13.75-14.0 GHz on certain satellites at certain orbital locations.

[22] Upon privatization, former INTELSAT Signatories and non-Signatory investing entities were issued shares in Intelsat Ltd. according to their March 2001 investment shares in INTELSAT.

[23] Application of Intelsat LLC for Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit, *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 12313, 12290 (para. 71) (2001) (*"Intelsat LLC ORBIT Act Compliance Order"*).

[24] Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Authorization and Order*, 19 FCC Rcd 2404 (Int'l Bur., 2004) ("*Loral/Intelsat Order"*). On March 4, 2004, the Commission adopted a Supplemental Order clarifying the date the Special Temporary Authority was to commence. Loral Satellite, Inc. (Debtor-in-Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended*, Supplemental Order*, 19 FCC Rcd 4029 (Int'l Bur., 2004).

in the ORBIT Act. Intelsat was granted authority to provide additional services to the then-existing Loral customers.[25]

- Intelsat was originally required by the ORBIT Act to conduct an IPO by October 1, 2001, in order to "substantially dilute" ownership by former INTELSAT Signatories.[26] Subsequently, in 2002 and 2004, Congress amended the ORBIT Act to extend the deadline for Intelsat to conduct its IPO.[27] In October 2004, Congress added Sections 621(5)(F) and (G) to the ORBIT Act, to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).[28]

- On December 22, 2004, the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus Holdings Limited ("Zeus"),[29] a private equity group, organized under the law of Bermuda, which would acquire 100 percent of the equity and voting interests of Intelsat ("Zeus/Intelsat Transaction").[30]

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[25] *Loral/Intelsat Order,* 19 FCC Rcd at 2429 (para. 65).

[26] Pub. L. No. 106-180, 114 Stat. 48 (2000). Congress also gave the Commission discretion to extend the IPO deadline to no later than December 31, 2002. INTELSAT Request for Extension of Time Under Section 621(5) of the ORBIT Act, *Order,* 16 FCC Rcd. 18185 (2001).

[27] Pub. L. No. 107-233, 116 Stat. 1480 (2002) (extending Intelsat's IPO deadline to December 31, 2003, and giving the Commission the discretionary authority to further extend the deadline to no later than June 30, 2004); Public Law No. 108-228, 118 Stat. 644 (2004)(extending Intelsat's IPO deadline to June 30, 2005, and giving the Commission the discretionary authority to further extend the deadline to no later than December 31, 2005).

[28] Public Law No. 108-371, 118 Stat. 1752 (2004).

[29] Zeus Holdings Limited subsequently changed its name to Intelsat Holdings, Ltd. See footnote 29, *infra*.

[30] *Intelsat, Ltd., Transferor, and Zeus Holdings Limited, Transferee, Consolidated Application for Consent to Transfers of Control of Holders of Title II and Title III Authorizations and Petition for Declaratory Ruling Under Section 310 of the Communications Act of 1934, As Amended*, IB Docket No. 04-366, Order and Authorization, DA 04-4034, 19 FCC Rcd 24820 (Int'l Bur., WTB and OET 2004) ("*Intelsat-Zeus Order*"). In early 2005, the Commission granted authority to interpose Intelsat Subsidiary Holding Company Ltd. into the chain of ownership and modified its foreign ownership ruling to include new Bermuda-based intermediate parent Intelsat Subsidiary Holding Company Ltd. *Intelsat, Ltd*., File No. ISP-PDR-20050203-00004, Grant of Authority, Public Notice, Report No. TEL-00884, DA 05-479, 20 FCC Rcd 4052, 4053 (Int'l Bur., 2005); *Intelsat North America LLC*, File No. SAT-T/C-20050203-00022, and *Intelsat LLC*, File No. SAT-T/C-20050203-00023, Grant of Authority, Public Notice, Report No. SAT-00276, DA 05-594 (Int'l Bur., March 4, 2005), at 1-2; *Intelsat LLC*, File Nos. SES-T/C-20050203-00138, -00139 and -00140, and *Intelsat MTC LLC*, File No. SES-T/C-20050203-00141, Grant of Authority, Report No. SES-00691 (Int'l Bur. March 2, 2005), at 26-27; *Intelsat USA License Corp*., File No. ITC-T/C-20050418-00279, *Intelsat General Corporation*, File No. ITC-T/C-20050418-00280, and *Intelsat MTC LLC*, File No. ITC-T/C-20050418-0281, Grant of Authority, Public Notice, Report No. TEL-00931, DA 05-2192 (Int'l Bur., 2005), at 3-4. During 2005, Zeus Holdings Limited changed its name to Intelsat Holdings, Ltd. *See, e.g., Intelsat USA License Corp*., Report No. TEL-00931, at 3.

- On April 8, 2005, the Commission determined that (a) Intelsat was in compliance with the alternative certification process under Sections 621(5)(F) and 621(5)(G) of the ORBIT Act; (b) that Intelsat can forgo the requirement for an IPO and the public listing of securities; and that (c) Intelsat was no longer subject to the provisions of Section 602 that prohibited Intelsat from providing "additional services."[31]

- On May 24, 2005, the Commission granted Intelsat's request for approval of the *pro forma* assignments of space station authorizations and related Tracking, Telemetry and Control ("TT&C") earth station licenses, from Intelsat to Intelsat North America LLC.[32]

- On June 19, 2006, the Commission approved the merger of Intelsat Holdings, Ltd. with PanAmSat Holding Corporation ("PanAmSat").[33] The FCC action approving the transaction granted applications for the transfer of control, to Intelsat, of Commission-issued licenses and authorizations held by PanAmSat and its subsidiaries. Upon consummation of the transaction on July 3, 2006, PanAmSat became a wholly-owned subsidiary of Intelsat continuing operation as a separate corporate entity.

- On December 19, 2007, the Commission granted a series of applications filed by Intelsat Holdings, Ltd. and Serafina Holdings Limited ("Serafina") seeking consent to transfer of control of Intelsat Holdings, Ltd., and its six subsidiary licensees from Intelsat's existing control group of four private equity firms to Serafina, a then newly-formed Bermuda company indirectly controlled by BC Partners Holdings Limited, a U.K.-based investment firm organized under the laws of Guernsey, a British Crown Dependency.[34] Serafina and Intelsat subsequently consummated the proposed transaction.

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[31] Intelsat, Ltd. Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, FCC 05-86, IB Docket No. 05-18, 20 FCC Rcd 8604 (2005) ("*Intelsat Certification Order*").

[32] Intelsat LLC, Assignor, and Intelsat North America LLC, Assignee, Applications for Consent to Pro Forma Assignment of Space Station Authorizations and Related TT&C Earth Station Licenses, File Nos., SAT-ASG-20050418-00084, SAT-ASG-20050418-00085, SES-ASG-20050502-00519, SES-ASG-20050502-00520, SES-ASG-20050502-00562, DA-05-1545, Public Notice, Report No. SAT-00294, March 27, 2005.

[33] Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, PEOP PAS, LLC, Transferors, Intelsat Holdings, LTD, Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., *Memorandum Opinion and Order*, 21 FCC Rcd 7368 (2006) ("*Intelsat-PanAmSat Order*").

[34] Intelsat Holdings, Ltd., Transferor, and Serafina Holdings Limited, Transferee, Consolidated Application for Consent to Transfer Control of Holders of Title II and Title III Authorizations, IB Docket No. 07-181, *Memorandum Opinion and Order*, 22 FCC Rcd 22151 (2007).

- On February 21, 2008, the Commission released an order[35] modifying certain space station licenses held by Intelsat North America to include two conditions requested jointly by Intelsat and the International Telecommunications Satellite Organization ("ITSO").[36] The conditions were two of three conditions initially proposed by ITSO.[37] The adoption of the two conditions was supported by the State Department, after consultations with NTIA.[38]

- On January 20, 2010, Intelsat General Corporation was granted a pro forma transfer of control of Intelsat General Corporation's international Section 214 authority from Intelsat Global, Ltd. (Bermuda) to Intelsat Global, S.A. (Luxembourg), effective December 15, 2009. All of Intelsat's (Bermuda) direct and indirect subsidiaries were migrated from Bermuda and reorganized as Luxembourg entities. There was no change in the ultimate ownership and control of Intelsat General Corporation.[39]

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[35] Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended, IB Docket No. 06-137, *Order of Modification,* DA 08-444, 23 FCC Rcd 2764 (Int'l Bur., 2008) (*Order of Modification*). The modification implemented a Commission order, pursuant to Section 316 of the Communications Act of 1934, as amended, to impose the two conditions. *See* Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended, IB Docket No. 06-137, *Order Proposing Modification*, DA 07-4715, 22 FCC Rcd 20093 (Int'l Bur., 2007). Intelsat North America, while stating that it did not object to the proposed conditions in principle, filed a Limited Protest to Seek Clarification as to the circumstances in which the conditions would apply. Intelsat North America Limited Protest to Seek Clarification, IB Docket No. 06-137 (filed January 10, 2008) at 1-2. The request for clarification was granted in part, and denied in part, in the February 2008 modification order.

[36] ITSO is the residual, post-privatization intergovernmental organization, governed by international agreement ("ITSO Agreement") that oversees the Intelsat public service obligations established as part of the 2001 privatization. *See* Agreement Relating to the International Telecommunications Satellite Organization (ITSO Agreement) (November 17, 2000), Art. III(a) ("… the main purpose of ITSO is to ensure, through the Public Services Agreement, that the Company provides, on a commercial basis, international public telecommunications services, in order to ensure performance of the Core Principles."), *available at* http://www.itso.int. The United States is a party to the ITSO Agreement, with the State Department serving as the U.S. representative. *See Order of Modification*, 23 FCC Rcd at 2764. The two conditions explicitly obligate Intelsat to remain a signatory to the Public Services Agreement between Intelsat and ITSO approved by the ITSO Twenty-fifth Assembly of Parties, and provide, for licensing purposes, that no entity can be considered a successor-in-interest to Intelsat under the ITSO Agreement unless the entity has undertaken to perform the obligations of the Public Services Agreement.

[37] Petition of ITSO, IB Docket No. 06-137 (filed July 10, 2006) ("Petition").

[38] Letter from Ambassador David A. Gross, United States Coordinator, International Communications and Information Policy, U.S. Department of State, to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission, IB Docket No. 06-137 (dated March 15, 2007) at 1, 3-4. *See also*, Letter from Steven W. Lett, Deputy United States Coordinator, International Communications and Information Policy, U.S. Department of State to Helen Domenici, Chief, International Bureau, Federal Communications Commission, IB Docket No. 06-137 (filed February 1, 2008).

[39] Intelsat General Corporation notification of Transfer of Control from Intelsat Global, Ltd. (Bermuda) to Intelsat Global, S.A. (Luxembourg), DA-10-110 (January 20, 2010).

- Pursuant to the United States' obligations as the notifying administration to the ITU[40] for Intelsat's fixed satellite service C- and Ku-band assignments transferred at privatization, the Commission has participated in a number of international satellite coordination negotiations as Intelsat's licensing Administration. Since the 2009 Orbit Act Report to Congress, the Commission has participated in coordination meetings with the Russian Federation and Malaysia on behalf of Intelsat and a number of other U.S. licensees. Over the past reporting period, satellite coordination agreements have been concluded via correspondence with Canada.

- The United States has a coordination process whereby U.S. operators may reach operational arrangements with operators of other Administrations. These operational arrangements are then submitted to the operators' respective Administrations for approval. Once approved by both Administrations, the operational arrangements become, or form the basis for, a coordination agreement between the Administrations under the ITU procedures. Since the 2009 Orbit Act Report to Congress, Intelsat has concluded operational arrangements by correspondence with Canada and the United Kingdom. In due course, this process will lead to coordination agreements between the United States and the foreign Administration.

- Since the June 15, 2009 Tenth Annual Report, Intelsat has filed a number of requests for license authorizations and modifications. The Commission has reviewed these requests and acted on them consistent with the Commission's licensing rules and processes.[41]

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[40] As the notifying administration on behalf of Intelsat, the Commission is responsible for discharging the obligation undertaken in the Constitution of the ITU, in the Convention of the ITU, and in the Administrative regulations. Article 1, Section 1.2, International Telecommunication Union Radio Regulations.

[41] *See, e.g.,* Intelsat North America LLC, STA Application, Modification Request, File No. SAT-MOD-20090309-00034, DA 09-1363 (grant of authority on June 17, 2009 with conditions); PanAmSat Licensee Corp, Modification Request, File No. SAT-MOD-20090108-00004, DA 09-1516 (grant of authority on July 8 2009 with conditions); Intelsat North America LLC, Modification Request, File No. SAT-MOD-20090204-00015, DA 09-1547, (grant of authority on July 16, 2009 with conditions); PanAmSat Licensee Corp., Launch and Operate Application, File No. SAT-RPL-20090123-00007, DA 09-2162 (grant of authority on October 1, 2009 with conditions); Intelsat North America LLC, Launch and Operate Application, File No. SAT-LOA-20090410-00043, DA 10-205 (grant of authority on November 25, 2009, with conditions); Intelsat North America LLC, Request for Special Temporary Authority, File No. SAT-STA-20100111-00046, DA 10-281 (grant stamp on February 12, 2010 with conditions); Intelsat North America, LLC, Request for Special Temporary Authority, File No. SAT-STA-20100315-0046, DA 10-587 (grant stamp with conditions on April 1, 2010); Intelsat North America LLC, Launch and Operate Application, File No. SAT-A/O-20091223-00151, DA 10-614 (grant stamp on April 2, 2010 with conditions).

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Inmarsat

- Inmarsat privatized on April 15, 1999, prior to enactment of the ORBIT Act. The ORBIT Act specified a number of criteria for determining whether Inmarsat's privatization is pro-competitive. On October 9, 2001, the Commission released an Order in which it concluded that Inmarsat had privatized in a manner consistent with the non-IPO requirements of Sections 621 and 624 of the ORBIT Act.[42]

- In its decision, having found that Inmarsat had privatized in a manner consistent with the non-IPO requirements of the Act,[43] the Commission granted Comsat Corporation, Stratos Mobile Networks, LLC, SITA Information Computing Canada, Inc., Honeywell, Inc., Marisat Communications Network, Inc., and Deere & Company regular earth station authority to use certain Inmarsat satellites for communications services to, from, or within the United States.

- The ORBIT Act originally required Inmarsat to conduct an IPO no later than October 1, 2000.[44] Subsequently, Congress amended the ORBIT Act several times to extend the deadline for Inmarsat to conduct an IPO.[45] Ultimately, in October 2004, Congress amended the ORBIT Act, extending the IPO deadline until June 30, 2005 and adding Sections 621(5)(F) and (G) to provide a certification process as an alternative to the IPO requirements under Sections 621(5)(A) and (B).[46]

- On June 14, 2005, the Commission determined that Inmarsat was in compliance with the alternative certification process under Sections 621(5)(F) and 621(5)(G) of the ORBIT Act, that Inmarsat could forgo the requirement for an IPO and the public listing of securities, and that Inmarsat was no longer subject to the provisions of Section 602 that prohibited Inmarsat from providing additional services.[47]

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[42] Comsat Corporation *et al*, *Memorandum Opinion, Order and Authorization*, 16 FCC Rcd 21661 (2001) ("*Inmarsat ORBIT Act Compliance Order")*.

[43] 47 U.S.C. § 761(a), which precludes Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act.

[44] Pub. L. No. 106-180, 114 Stat. 48 (2000).

[45] On June 30, 2003, Congress extended Inmarsat's IPO deadline to June 30, 2004, and gave the Commission discretion to further extend this deadline to no later than December 31, 2004. ORBIT Technical Corrections Act of 2003, Pub. L. No. 108-39, § 763, 117 Stat. 835 (2003). Inmarsat Ventures Limited Request for Extension of Time under Section 621(5) of the Communications Satellite Act of 1962, as amended by the Open-Market Reorganization for the Betterment of International Telecommunications Act, *Order,* 19 FCC Rcd 11387 (2004).

[46] Public Law No. 108-371, 118 Stat. 1752 (October 25, 2004).

[47] Inmarsat Group Holdings Limited Petition for Declaratory Ruling that Intelsat, Ltd. Complies With Section 621(5)(F) of the ORBIT Act, *Memorandum Opinion and Order*, IB Docket 04-439, FCC 05-126 (2005) ("*Inmarsat Certification*"). Section 681(2) of the ORBIT Act defines "additional services" for Inmarsat as the non-maritime and non-aeronautical services in the 1.5 and 1.6 GHz band on planned

- Beginning in 2005, resellers of Inmarsat satellite services filed applications to continue or, in some cases, to commence operations of mobile earth terminals ("METs") and gateway land earth stations ("LESs") in the United States via various Inmarsat satellites not covered by existing coordination agreements for the L-band over North America, including Inmarsat's fourth generation ("I-4") satellites.[48] These applications were opposed by Mobile Satellite Ventures Subsidiary LLC ("MSV"), the U.S.-licensed mobile satellite service ("MSS") operator in the L-band.[49] In order to permit continuity of service to existing Inmarsat customers[50] and to allow use of its new Broadband Global Area Network ("BGAN")[51] services in support of emergency operations, the Commission granted limited authority to resellers to operate the I-4F2 satellite via an I-4 satellite while their applications for permanent authorization were under consideration.[52]

- On December 21, 2007, Inmarsat and MSV signed a "Spectrum Coordination and Cooperation Agreement" that resolved outstanding differences between the parties regarding use of the L-band.[53] According to the parties, the agreement addresses operations in the L-band in North America, including re-banding of spectrum, coordination of next generation Inmarsat and MSV satellites, resolution of pending

satellites in the 2 GHz band. *See* Pub. L. 106-180 § 602(a) (precluding Commission authorization of additional services by Inmarsat until Inmarsat has privatized in accordance with the Act).

[48] The first two Inmarsat I-4 satellites were launched in 2005. *See* Inmarsat website, "About Inmarsat: Our Satellites," available online at http://www.inmarsat.com/About/Our_satellites/default.aspx. The third I-4 satellite was launched on August 18, 2008. Press Release, "Successful Launch for Third Inmarsat-4 Satellite," dated August 18, 2009, available online at http://www.inmarsat.com/about/investors/Press_releases.

[49] MSV subsequently changed its name to SkyTerra Communications. *See* Press Release, "Mobile Satellite Ventures Changes Name to SkyTerra," dated December 8, 2008, available online at http:// www.skyterra.com/media/press-releases.cfm.

[50] The Commission had previously authorized the requested operations via the third generation Inmarsat 3F4 satellite.

[51] BGAN service is a mobile or portable application that supports both Internet protocol ("IP") packet-switched data and circuit-switched applications. Inmarsat indicates that BGAN data transmission rates will allow customers to access to e-mail, local area networks, the Internet, intranet/extranet, video conferencing services, video-on-demand, and voice communications (including Voice over IP) from almost anywhere in the world.

[52] *See* Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00788 (rel. January 25, 2006); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00821 (rel. May 17, 2006); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00835 (rel. July 5, 2006); Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-00990 (rel. December 19, 2007).

[53] Press Release, "SkyTerra, Mobile Satellite Ventures and Inmarsat Sign Spectrum Coordination and Cooperation Agreement," December 21, 2007, available online at http://www.msvlp.com/media/press-releases-view.cfm?id=158&yr=2007.

regulatory issues in the United States and Canada, and greater system technical flexibility.

- On March 26, 2008, the Commission reached government-to-government satellite coordination agreements with the United Kingdom and Canada, based upon the "Spectrum Coordination and Cooperation Agreement" of Inmarsat and MSV. In light of these developments, on March 27, 2008, the Commission granted nearly all pending applications for regular authority to continue existing services via Inmarsat satellites.[54] The Commission also granted one reseller's applications for regular authority to provide new BGAN services via the I-4F2 satellite on April 1, 2008.[55] An additional reseller's application for regular authority to provide BGAN services via the I-4F2 was granted in January 2009.[56]

- In June 2008, Inmarsat filed an application seeking approval of the indirect transfer of control of Stratos Global Corporation and its wholly-owned subsidiaries from an irrevocable trust to Inmarsat. In January 2009, the Bureau granted this application for transfer of control.[57] On February 17, 2009, Vizada filed an Application for Review, which is currently under consideration.

- On October 21, 2008, the Commission released an Order making administrative changes to the way in which the Commission specifies authorized points of communication in licenses for L-band MSS user terminals using Inmarsat space stations.[58] Specifically, the Commission established a list of Inmarsat satellites approved to serve the United States in the L-band (the "ISAT List"). The list includes all Inmarsat satellites that have been found to meet the Commission's legal, technical, and policy requirements to access the U.S. market. As a result, earth station licensees and applicants may seek authority to communicate with all Inmarsat satellites on the ISAT List by listing "ISAT" as the point of communication, rather than having to seek authorization to communicate with Inmarsat satellites on a satellite-by-satellite and orbital-location-by-orbital-location basis.

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[54] Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-01021 (rel. April 2, 2008).

[55] *Id.*

[56] Actions Taken, Satellite Communications Services Information, *Public Notice*, Report No. SES-01103 (rel. January 14, 2009) (granting authority to provide BGAN services via Inmarsat 4F2 to MVS Fed, LLC).

[57] Application of Robert M. Franklin (transferor) and Inmarsat plc (transferee) Consolidated Application for Consent to Transfer of Control of Stratos Global Corporation and Its Subsidiaries from an Irrevocable Trust to Inmarsat, plc., DA 09-117, *Memorandum Opinion and Order and Declaratory Ruling*, 24 FCC Rcd 449 (Int'l Bur., rel. January 16, 2009), *application for review pending*.

[58] Inmarsat, Inc., *Order*, 23 FCC Rcd 15268 (Int'l Bur. 2008).

- Four Inmarsat satellites were included in the original ISAT List.[59] Since the creation of the ISAT List, three Inmarsat satellites have been added to the ISAT List,[60] and the orbital location of one satellite on the ISAT List has been changed to a different location.[61] In addition, on October 22, 2009, Inmarsat's application to operate METs with satellites on the ISAT List was granted.[62]

- In April 2009, Inmarsat's prior distribution arrangements expired and Inmarsat entered into new arrangements with its distributors.[63] Inmarsat also completed the acquisition of the shares of Stratos Global Corporation.[64]

- In August 2008, SkyTerra Communications, Inc. and Harbinger Capital Partners Funds filed a series of applications seeking approval of a transfer of control of SkyTerra Subsidiary LLC from SkyTerra Communications to Harbinger. Harbinger holds approximately 29 percent of the issued and outstanding voting shares of Inmarsat plc and holds convertible bonds in Inmarsat plc. On March 26, 2010, the International Bureau, Office of Engineering and Technology and the Wireless Telecommunications Bureau issued a Memorandum Opinion and Order and Declaratory Ruling approving the proposed transaction subject to conditions.[65] The

[59] The Inmarsat satellites included in the original ISAT List were the I-3F2 at 15.5° W.L., the I-3F3 at 178° E.L., the I-3F4 at 142° W.L., and the I-4F2 satellite at 52.75° W.L. *See id.*

[60] Inmarsat, Inc., Public Notice: Satellite Communications Services Information Re: Actions Taken, Report No. SES-01097 (Int'l Bur., rel. December 24, 2008) (adding Inmarsat 4F1 at 143.5° E.L. and Inmarsat 4F3 at 97.65° W.L. to ISAT List). On September 8, 2009, Inmarsat 2F1 at 142° W.L. was added, subject to conditions, to the ISAT list. *See* http://licensing.fcc.gov/ibfsweb/ib.page.FetchAttachment?attachment_key=738040].

[61] Inmarsat plc, Petition for Declaratory Ruling to Modify ISAT List to Reflect Resumed Operations of I-3F4 at 54° W.L., File No. SAT-PPL-20090107-00003; SAT-APL-20090115-00005 (grant stamp on April 6, 2009, with conditions).

[62] Inmarsat Hawaii Inc., Application for Inmarsat Hawaii Blanket MET License, File No. SES-LIC-20090217-00184.

[63] *Inmarsat Group Limited, Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934 for the fiscal year ended December 31, 2008,* April 29,2009, at 22, 41, available at http://www.sec.gov/Archives/edgar/data/1291396/000119312509091361/d20f.htm.

[64] Inmarsat Press Release, "Inmarsat completes acquisition of Stratos Global and implements new distribution terms with partners," April 15, 2009, available at http://www.inmarsat.com/About/Newsroom/Press/00024905.aspx?language=EN&textonly=False.

[65] Memorandum Opinion and Order and Declaratory Ruling, DA 10-535, dated March 26, 2010, available on-line at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-10-535A1.pdf.

transfers of control were consummated on March 29, 2010.[66] Multiple parties filed petitions for reconsideration, which the Commission is currently reviewing. [67]

- In addition, on August 22, 2008, Harbinger Capital Partners Funds filed applications seeking transfer of control of Inmarsat Hawaii, Inc. and Inmarsat Inc. to Harbinger. These applications are pending before the Commission.

- Since the June 15, 2009 Tenth Annual Report, the Commission has granted several earth station applications to communicate with Inmarsat's satellites as a point of communication.[68]

New Skies Satellites

- New Skies is the Netherlands-based INTELSAT spin-off, created in 1998 as INTELSAT's first step toward privatization. On March 29, 2001, the International Bureau's Satellite and Radiocommunication Division added four satellites operated by New Skies to the Commission's Permitted Space Station List[69] ("Permitted List") with conditions to remove secondary status requirements for certain New Skies satellites.[70] This action enabled New Skies to provide satellite services to, from, and

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[66] Letter from Henry Goldberg and Joseph A. Godles to Marlene H. Dortch, dated March 30, 2010, available online at http://fjallfoss.fcc.gov/ecfs/document/view?id=7020399437.

[67] *See e.g.,* Petition for Reconsideration, filed by AT&T Inc., April 1, 2010, available on-line at http://fjallfoss.fcc.gov/ecfs/document/view?id=7020400432. Petition for Partial Reconsideration, filed by Verizon Wireless, April 1, 2010, available on-line at http://fjallfoss.fcc.gov/ecfs/ document/ view?id=7020400197. The Commission is also considering comments filed by Sprint and the Public Interest Spectrum Coalition in opposition to the AT&T and Verizon petitions.

[68] *See, e.g.*, THRANE & THRANE Airtime Ltd., Request for Special Temporary Authority to use Inmarsat 4F3, File No. SES-STA-20090609-00704 (grant stamp on June 16, 2009 with conditions); Inmarsat Hawaii Inc., Application Modifications to operate with the Inmarsat 4F1, File Nos. SES-MOD-20081224-01717, SES-MOD-20081224-01718, SES-AMD-20090116-00052, SES-AMD-20090116-00053 (grant stamp on July 14, 2009); BT Americas Inc., Request for Special Temporary Authority, File Nos. SES-STA-20090203-00130, SES-STA-20090707-00838 (grant stamp on July 16, 2009 with conditions); Vizada, Inc., Application Modification to add the Inmarsat 4F3 satellite as a point of communication, File No. SES-MFS-20081031-01432 (grant stamp on January 12, 2010); Inmarsat Hawaii Inc., Request for Special Temporary Authority, File No. SES-STA-20100204-00163 (grant stamp on February 23, 2010); LXE Inc., Application Modification, File No. SES-MOD-20090611-00726 (grant stamp on May 11, 2010).

[69] The Permitted List denotes all satellites and services with which U.S. earth stations with "routinely" authorized technical parameters operating in the conventional C- and Ku-bands ("ALSAT" earth stations) are permitted to communicate, without additional Commission action. Those communications must fall within the same technical parameters and conditions established in the earth stations' licenses. Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic International Satellite Service in the United States, *First Order on Reconsideration*, 15 FCC Rcd 7207 (1999).

[70] New Skies Satellites, N.V., DA 01-513, *Order*, 16 FCC Rcd 7482 (Int'l Bur., Sat. and Rad. Div., rel. March 29, 2001).

within the United States on a full-term basis.[71]

- On June 25, 2004, the Commission granted an application to transfer control of Commission licenses and authorizations held by New Skies Satellites N.V. and New Skies Networks, Inc. to New Skies Satellites B.V.[72]

- On March 29, 2006, the Commission approved the transfer of control from New Skies Networks, Inc. ("NSN") to SES GLOBAL S.A. of licenses for six non-common carrier earth stations for communication with non-U.S. licensed satellites that have been added to the Commission's Permitted List.[73] The Commission also approved the transfer of control of three non-U.S. satellites operated by New Skies that the Commission authorized to provide service to the United States pursuant to the Permitted List.[74] The merger was consummated on March 30, 2006.

- On September 7, 2009, SES S.A. announced that the operations of its subsidiaries New Skies Satellites B.V. and SES Americom would be conducted under the single brand name, SES WORLD SKIES.[75] This change did not affect the underlying legal entities that hold Commission authorizations or U.S. market access rights.

- Currently, three New Skies satellites are on the Permitted List.[76] Earth station operators with ALSAT authority continue to have authority to access New Skies satellites on the Commission's Permitted List.[77]

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[71] New Skies Satellites, N.V., Petition for Declaratory Ruling, *Order*, 16 FCC Rcd 6740 (Sat. and Rad. Div., 2001).

[72] Application of New Skies Satellites N.V. (Transferor) and New Skies Satellites B.V. (Transferee) Transfer Control of FCC Licenses and Authorizations Held by New Skies Satellites N.V. and New Skies Networks, Inc., 19 FCC Rcd 21232 (2004).

[73] Permitted List available online at http://www.fcc.gov/ib/sd/se/permitted.html.

[74] New Skies Satellites Holdings LTD, Transferor, and SES Global S.A., Transferee, Applications to Transfer Control of Authorizations Held By New Skies Networks, Inc. and Notification of Change to Permitted Space Station List, DA 06-699, IB Docket No. 06-23, 21 FCC Rcd 3194, *Public Notice* (Int'l Bur., approved the transfer of control with conditions) (2006).

[75] *See* http://www.ses-worldskies.com/worldskies/news_and_events/news_archive/ 2009/index.php?pressRelease=/pressReleases/archive-by-year/2009/09-09-07/index.php.

[76] The three New Skies satellites on the Permitted List are: NSS-7 at 42 W.L., NSS 806 at 40.5 W.L., and NSS-9 at 177 WL. One New Skies satellite, NSS-5, was removed from the Permitted List in 2009 after it was moved to a location where it no longer served the United States. New Skies filed a request in December 2009 that the NSS-5 be placed back on the Permitted List at the 20.0° W.L. (340.0° E.L.) orbital location. *See*, Petition for Declaratory Ruling to be Added to the Permitted List, File Nos. SAT-PPL-20091208-00142, SAT-APL-20100219-00034, Policy Branch Information, Actions Taken, Public Notice, Report No. SAT00-667 (rel. Feb.26, 2010). This request is pending before the Commission.

- An earth station must seek specific authority to communicate with a space station if the earth station does not meet the technical requirements for an ALSAT designation and/or if the earth station seeks to communicate with a satellite in frequency bands other than the conventional C- and Ku-bands. In the last year, the Commission granted numerous earth stations specific authority to communicate with a New Skies satellite.[78]

Status of Comsat

- The ORBIT Act terminated ownership restrictions on COMSAT Corporation ("Comsat"), as mandated by the Communications Satellite Act of 1962. As a result, Lockheed Martin and Comsat jointly filed an application with the Commission for transfer of control of Comsat's various licenses and authorizations. On July 31, 2000, the Commission found that Lockheed Martin's purchase of Comsat was in the public interest and authorized Comsat to assign its FCC licenses and authorizations to a wholly-owned subsidiary of Lockheed Martin Corporation.[79]

- On December 18, 2001, the Commission granted requests by Lockheed Martin Global Telecommunications, COMSAT Corporation, and COMSAT General Corporation, together with Telenor Satellite Services Holdings, Inc., Telenor Satellite, Inc., and Telenor Broadband Services, AS request to assign certain Title II

[77] Any of the more than 8360 earth stations that have ALSAT authority can communicate with New Skies satellites that appear on the Permitted List, in the conventional C- and Ku- bands, without any further authorization. *See* note 76 *supra*.

[78] *See, e.g.,* SES Americom, Inc., Application for Modification, File Nos. SES-MOD-20090128-00079, SES-AFS-20090504-00454 and SES-AMD-20090210-00167 (grant stamp on July 23, 2009, with conditions); SES Americom, Inc., Request for Special Temporary Authority, File No. SES-STA-20090520-00630 (grant stamp on July 20, 2009, with conditions); PanAmSat Licensee Corp., Special Temporary Authority applications, File Nos. SES-STA-20090922-01211, SES-STA-20090922-01212 (grant stamp on October 16, 2009, with conditions); KVH Industries, Inc., Application Amendment, File Nos. SES-AFS-20061130-02065, SES-AFS-20090515-00589, SES-AMD-20070723-00976, SES-AMD-20090515-0596, SES-LIC-20060824-01502 (grant stamp on November 2, 2009, with conditions); MTN License Corp., Application Modification, File No. SES-MFS-20090626-00796 (grant stamp on December 15, 2009, with conditions); Vizada, Inc., Application Modification, File No. SES-MFS-20081031-01432 (grant stamp on January 12, 2010, with conditions); SES Americom, Inc., Application Modification, File No. SES-MOD-20100108-00022 (grant stamp on February 16, 2010); Vizada, Inc., Request for Special Temporary Authority, File No. SES-STA-20100128-00131 (grant stamp on February 19, 2010, with conditions); SES Americom, Inc., Application Modification, File No. SES-MFS-20100223-00244 (grant stamp on March 16, 2010, with conditions); Universal Space Network, Inc., License Application, File No. SES-LIC-20100318-00330 (grant stamp on May 4, 2010 with conditions); LXE Inc., Application Modification, File No. SES-MOD-20090611-00726 (grant stamp on May 11, 2010, with conditions).

[79] Lockheed Martin Corporation, Comsat Government Systems, LLC, and Comsat Corporation, Applications for Transfer of Control of Comsat Corporation and Its Subsidiaries, Licensees of Various Satellite, Earth Station, Private Land Mobile Radio and Experimental Licenses, and Holders of International Section 214 Authorizations*, Order and Authorization*, 15 FCC Rcd 22910 (2000), *erratum*, 15 FCC Rcd 23506 (2000); *recon. denied*, 17 FCC Rcd 13160 (2002).

common carrier authorizations and Title III radio licenses held by COMSAT to Telenor.[80] The assignment was in connection with Telenor's acquisition of Comsat Mobile Communications ("CMC"), a business unit of COMSAT Corporation. On January 11, 2002, Telenor completed its purchase of substantially all of the assets of CMC, and all of CMC's licenses and authorizations were transferred to Telenor pursuant to Commission authorization.[81]

- On October 25, 2002, the Commission granted Comsat and Lockheed Martin's jointly filed applications to assign four non-common carrier earth station licenses and an Experimental License to Intelsat.[82]

- On October 29, 2004, Intelsat, Ltd completed the acquisition of the COMSAT General businesses from COMSAT General Corporation, COMSAT New Services, Inc., and Lockheed Martin.[83] The Commission approved the acquisition subject to compliance by Intelsat subsidiaries with the terms of the Intelsat Commitment letter with the Criminal Division of the U.S. Department of Justice, the U.S. Department of Homeland Security, and the Federal Bureau of Investigation.[84]

Direct Access

- Section 641(a) of the ORBIT Act requires that users and service providers be permitted to obtain Level 3 direct access to INTELSAT capacity.[85] Previously, the

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[80] Lockheed Martin Global Telecommunications, Comsat Corporation, and Comsat General Corporation, Assignor and Telenor Satellite Mobile Services, Inc. and Telenor Satellite, Inc., Assignee, Applications for Assignment of Section 214 Authorizations, Private Land Mobile Radio Licenses, Experimental Licenses, and Earth Station Licenses and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order and Authorization*, 16 FCC Rcd 22897 (2001), *erratum,* 17 FCC Rcd 2147 (2002).

[81] Comments Invited on Telenor Satellite Services Holdings, Inc. Petition for Declaratory Ruling on Inapplicability of Cost Accounting Requirements, *Public Notice*, 17 FCC Rcd 2444 (2002).

[82] Lockheed Martin Corporation, COMSAT Corporation, and COMSAT Digital Teleport, Inc., Assignors, and Intelsat, Ltd., Intelsat (Bermuda), Ltd., Intelsat LLC and Intelsat USA License Corp., Application for Assignment of Earth Station and Wireless Licenses and Section 214 Authorizations and Petition for Declaratory Ruling, IB Docket No. 02-87, *Order and Authorization,* DA 02-2254, 17 FCC Rcd 27732, (Int'l Bur. & Wireless Tel. Bur., 2002) (*"Lockheed/Comsat/Intelsat Order"*).

[83] *Intelsat, Ltd. Form 20-F, Annual Report Pursuant to Section 13 or 15(d) of the Securities and Exchange Act of 1934 for the fiscal year ended December 31, 2004*, at 94.

[84] Applications of Comsat General Corporation, Lockheed Martin Global Telecommunications LLC, Comsat New Services, Inc., Intelsat LLC, and Intelsat MTC LLC to Assign Licenses and Authorizations and Request for a Declaratory Ruling on Foreign Ownership, Authorizations Granted, *Public Notice*, IB Docket No. 04-235, 19 FCC Rcd 21216 (2004).

[85] 47 U.S.C. § 765(a). "(a) ACCESS PERMITTED.--Beginning on the date of enactment of this title, users or providers of telecommunications services shall be permitted to obtain direct access to INTELSAT telecommunications services and space segment capacity through purchases of such capacity or services from INTELSAT. Such direct access shall be at the level commonly referred to by INTELSAT, on the date

Commission decided in a rulemaking proceeding, that Level 3 direct access is in the public interest.[86] The concept of direct access became moot with INTELSAT privatization on July 18, 2001, because Intelsat, as a private company, does not have Signatories.

- Prior to INTELSAT's privatization, the Commission implemented the requirement in Section 641(b) of the ORBIT Act that the Commission complete a rulemaking "to determine if users or providers of telecommunications services have 'sufficient opportunity' to access INTELSAT space segment directly from INTELSAT to meet their service or capacity requirements."[87] In September 2000, the Commission released a Report and Order requiring Comsat to "enter into negotiation with direct access customers on options to make capacity available where it is clear that there is insufficient capacity available that is not controlled by Comsat."[88]

- On March 13, 2001, Comsat submitted a report detailing the results of its negotiations and maintaining that direct access opportunities are increasing for those who want them. For example, the negotiations resulted in a commercial agreement between Comsat and WorldCom. The Commission placed Comsat's report on public notice, including Comsat's request to terminate the proceeding.[89] With INTELSAT's privatization and Intelsat Ltd.'s purchase of Comsat,[90] on November 21, 2002, the Commission released an Order that concluded that the underlying basis for Section 641(b) no longer existed, and terminated the proceeding.[91] In terminating the proceeding, the Commission noted that the termination does not imply any abdication of the Commission's appropriate oversight of Intelsat Ltd., and that as a U.S. licensee, Intelsat Ltd., will be subject to the same Commission oversight as any similarly-situated company authorized to provide services in the United States

of enactment of this title, as 'Level III'." Level 3 direct access permits non-signatory users and service providers to enter into contractual agreements with INTELSAT for space segment capacity at the same rates that INTELSAT charges its Signatories without having to use a Signatory as a middleman. Direct Access to the INTELSAT System, *Report and Order*, IB Docket No. 98-192, 15 FCC Rcd 15703 (1999) (*Direct Access Order*).

[86] *See Direct Access Order*, fn. 85*, supra.*.

[87] 47 U.S.C. § 765(b).

[88] Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Report and Order*, IB Docket No. 00-91, 15 FCC Rcd 19160 (2000).

[89] Public Notice, Report No. SPB-166, April 6, 2001.

[90] On October 25, 2002, the Commission approved the assignment of various earth station licenses, private land mobile radio licenses and international 214 applications from Comsat Corporation to Intelsat, Ltd.

[91] Availability of INTELSAT Space Segment Capacity to Users and Service Providers Seeking to Access INTELSAT Directly*, Order,* IB Docket No. 00-91, 17 FCC Rcd 24242 (2002).

Regulatory Fees

- The ORBIT Act authorizes the Commission "to impose similar regulatory fees on the United States signatory which it imposes on other entities providing similar services."[92] On July 10, 2000, the Commission released an Order concluding that Comsat should pay a proportionate share of the fees applicable to holders of Title III authorizations to launch and operate geosynchronous space stations.[93] Consistent with past decisions, the Commission stated that the costs attributable to space station oversight include costs directly related to INTELSAT signatory activities and are distinct from those recovered by other fees that Comsat pays, such as application fees, fees applicable to international bearer circuits, fees covering Comsat's non-Intelsat satellites, and earth station fees.[94] In 2002, the Circuit Court of Appeals for the District of Columbia held that the Commission's actions to impose regulatory fees on Comsat were justified on the basis that the underlying policy of Section 9 of the Communications Act of 1934, as amended, favoring recovery of regulatory costs gave the Commission good reason to require Comsat to bear its proportionate share of space station fees.[95]

- Post-privatization, Intelsat, as a U.S. licensee, has paid the required regulatory fees mandated by Section 9 of the Communications Act of 1934.

B. Status of INTELSAT Privatization

Intelsat privatized and became a U.S. licensee, as of July 18, 2001, transferring its assets to a commercial corporation. Pursuant to international agreement, an intergovernmental organization known as the International Telecommunications Satellite Organization ("ITSO") remained. ITSO, through a "Public Services Agreement" with Intelsat, monitors the performance of the company's public service obligations to maintain global connectivity and global coverage, provide non-discriminatory access to the system, and honor the lifeline connectivity obligation to certain customers, specifically, those customers in poor or underserved countries that have a high degree of dependence on Intelsat.[96] Under these commitments, the privatized Intelsat has made capacity available to lifeline users at fixed pre-privatization costs for approximately 12 years. ITSO has no operational or commercial role.

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[92] 47 U.S.C. § 765a(c). A 1999 decision of the United States Court of Appeals for the District of Columbia Circuit in *PanAmSat Corp. v. FCC,* 198 F.3d 890 (D.C. Cir. 1999), set aside and remanded the Commission's 1998 fee order, which did not assess a fee against Comsat.

[93] *In re* Assessment and Collection of Regulatory Fees for Fiscal Year 2000, MD Docket No. 00-58, 15 FCC Rcd 6533 (para. 17) (2000).

[94] *Id.*

[95] *See Comsat Corporation vs. FCC and PanAmSat Corp.*, 283 F.3d 344 (D.C. Cir. 2002).

[96] *INTELSAT Assembly of Parties Record of Decisions of the Twenty-Fifth (Extraordinary) Meeting,* AP-25-3E FINAL W/11/00, paras. 6-8 (November 27, 2000) ("2000 Assembly Decision").

Upon privatization, substantially all of INTELSAT's operational assets and liabilities were transferred to several companies within an affiliated group with a holding company structure. The record before the Commission showed that the companies created fiduciary Boards of Directors and the selection procedure for members of the Board of Directors of Intelsat, Ltd. resulted in a Board that is compliant with the ORBIT Act. The Commission found that privileges and immunities enjoyed by the pre-privatized INTELSAT had been terminated consistent with the requirements of the ORBIT Act.[97] The licensed companies have licenses through notifying Administrations in countries (the United States and the United Kingdom) that have effective competition laws and have commitments under the WTO Agreement that include non-discriminatory access to their satellite markets.[98] These companies are subject to U.S. or U.K. licensing authorities and conduct satellite coordinations according to ITU procedures under the auspices of these authorities.

Additionally, as detailed above, at the end of 2004 the Commission authorized the transfer of control of Intelsat's licenses and authorizations to Zeus, and the transaction was consummated in 2005.[99] Also in 2005, the Commission determined that Intelsat's certification complied with the ORBIT Act and it could forgo an IPO and listing of securities.[100] Thus, the Commission concluded that the provisions relating to additional services under Section 602 of the ORBIT Act were no longer applicable to Intelsat.[101]

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[97] 47 U.S.C. § 763(3) states that "such preferential treatment includes –

(A) privileged or immune treatment by national governments;

(B) privileges or immunities or other competitive advantages of the type accorded INTELSAT and Inmarsat and their signatories through the terms and operation of the INTELSAT Agreement and the associated Headquarters Agreement and the Inmarsat Convention; and

(C) preferential access to orbital locations.

Access to new, or renewal of access to, orbital locations shall be subject to the legal or regulatory processes of a national government that applies due diligence requirements intended to prevent the warehousing of orbital locations.

See also Intelsat Licensing Order, 15 FCC Rcd at 15463 ("As an intergovernmental organization, INTELSAT is immune from taxes and suits in national courts, unless it waives its immunity. Its treaty status helps ensure its access to the national markets of member countries.").

[98] *Applications of Intelsat LLC for Authority to Operate, and to Further Construct, Launch and Operate C-band and Ku-band Satellites that form a Global Communications System in Geostationary Orbit*, Intelsat LLC Supplemental Information, at 3 (August 17, 2001).

[99] *See* page 6, *supra*.

[100] *See* pages 6-8, *supra*.

[101] *See,* fn.. 4, *supra,* for a definition of "additional services".

II. Views of INTELSAT Parties on Privatization

The Commission, in response to the Public Notice for this Report, has not received any views directly from the INTELSAT Parties[102] regarding privatization.

III. Views of Industry and Consumers on Privatization

Inmarsat, Spacenet Inc. (Spacenet),[103] CapRock Communications, Inc. (CapRock),[104] ARTEL Inc. (ARTEL)[105] and Globecomm Systems, Inc. (Globecomm)[106] filed comments in response to the Commission's March 17, 2010, Public Notice inviting comments related to the development of this Report to Congress.[107] Intelsat filed reply comments, and ARTEL and Globecomm filed surreplies.[108]

A. Inmarsat Privatization Comments

Inmarsat notes that in June 2005, the Commission found that Inmarsat had satisfied the requirement to effectuate a substantial dilution of former Signatory financial interests. Inmarsat further states that, shortly thereafter, Inmarsat completed a successful IPO, and that, today, Inmarsat's shares are traded on the London Stock Exchange. According to Inmarsat, no former Inmarsat Signatory owns five percent or more of the company, and the aggregate ownership of foreign governments is nominal.[109]

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[102] The INTELSAT Parties are nations for which the INTELSAT agreement has entered into force. 47 U.S.C. § 769(a)(4)(A). Following privatization, the ITSO Agreement defines "Party" to mean a State for which the ITSO Agreement has entered into force or has been provisionally applied. *See* Agreement Relating to the International Telecommunications Satellite Organization, As Amended by the Twenty-Fifth (Extraordinary) Assembly of Parties in Washington, D.C. (November 17, 2000), at Art. I(p).

[103] Spacenet "provides satellite communications services in the United States to more than 100,000 customer locations using … Ku-band transponder capacity that it leases from various satellite operators," Spacenet at 1.

[104] CapRock has over 700 employees worldwide, serves federal civilian and intelligence agencies, provides remote communications services for the Department of Defense, and leases the majority of its satellite capacity from Intelsat, CapRock at 2-3.

[105] ARTEL uses satellite capacity leased from Intelsat to serve Department of Defense, Homeland Security, and other federal agencies (www.artelinc.com).

[106] Globecomm is a provider of international services, licensee of earth stations, and provider of satellite uplink and downlink services to its clients, Globecomm Comments at 1.

[107] In anticipation of this Eleventh Report, the Commission issued a Public Notice on March 17, 2010 inviting public comment. On April 14, 2010, the Bureau issued an Order extending the pleading cycle to April 21, 2010. On April 22, 2010, the Bureau issued an Order granting ARTEL and Globecomm's request for leave to file surreply and provided all interested parties with an extension to April 28, 2010.

[108] Links to these comments and reply comments can be found in the Appendix, and are included in this Report.

[109] *See,* Inmarsat at 1-2.

Inmarsat outlines its recent investments in new technologies, including its deployment of its fourth generation, Inmarsat 4 ("I-4") satellite network, its completed construction and Commission authorization for a Satellite Access Station in Hawaii.[110] Inmarsat also notes that it will introduce a world-wide Global Satellite Phone Service with a modernized handset called IsatPhone Pro.[111] Finally, the record reflects that none of the comments filed in response to the March 17, 2010, Public Notice referenced above were directed against Inmarsat practices.

B. Intelsat Privatization Comments

This year, four commenters – ARTEL, CapRock, Globecomm, and Spacenet – filed comments raising questions about the competitive state of the FSS market, and alleged anticompetitive behavior on the part of Intelsat since the 2006 Intelsat/PanAmSat merger.[112] These comments and Intelsat's response are summarized below.

i. The Effect of Intelsat's Privatization and Other FSS Consolidation

Generally, ARTEL, CapRock, and Globecomm argue that Intelsat's privatization coupled with increased industry consolidation has dramatically affected the FSS industry. Spacenet indicates that while Intelsat's privatization has had a positive impact on the domestic and global telecommunications markets,[113] it agrees that more recent industry consolidation among FSS operators means that the two largest players – Intelsat and SES Global – dominate the FSS market.[114] The commenters maintain that this lack of competition in the global FSS market discourages innovation, allows Intelsat to engage in certain anticompetitive practices, discourages

[110] *See,* Inmarsat at 2-4.

[111] *See,* Inmarsat at 4-5.

[112] *See Intelsat-PanAmSat Order*, n. 31 *supra*.

[113] Spacenet at 2. Spacenet cites the growth in satellite carriage of high definition television, demand for corporate networks, and introduction of broadband payloads as reasons for the 6 percent growth in transponder agreement revenues in 2008 alone.

[114] Spacenet argues that Intelsat and SES now control 83 percent of the data network services transponders serving the United States, resulting in few choices for transponder capacity. Spacenet at 3-4. Globecomm states that Intelsat and SES control 88 percent of the available satellites in Atlantic Ocean Region (AOR). Globecomm Comments at 4. Artel states that the international FSS industry now consists of two super-fleets operating in the AOR and the Pacific Ocean Region (POR); that Intelsat operates 52 satellites today, which is 32 more than it did prior to privatization; that with a geostationary arc crowded with operational satellites and suitable positions occupied or reserved, alternative competitors are unlikely to arise; that Intelsat holds a near monopoly on intercontinental satellite communications between the United States and East Africa, the Middle East, and Central Asia, routes with important foreigh policy implications for the United States. ARTEL Comments at 8-11. Artel also points out that for "mission critical" operations where it is necessary to use C-band, Intelsat holds six of the seven operational C-band equipped satellites between 330° and 360° E.L. *Id.* CapRock states that Intelsat and SES WorldSkies together control over 90 satellites, "the bulk of the world's FSS communications satellite fleet." CapRock at 8.

entry of new satellite operators, and, more broadly, hinders competition in the market for satellite services.[115]

ii. The Potential for Market Entry by New FSS Operators

Spacenet, ARTEL, CapRock, and Globecomm see a lack of available orbital locations as an impediment to any competitor to Intelsat in the FSS market. Spacenet notes, for example, that between 70° W.L. and 131° W.L., "every Ku-band slot is assigned to an operator or is subject to the superior rights of another country," and "Intelsat and SES Global control or have rights to two-thirds of the 31 slots in this portion of the orbital arc from which service to the United States can be provided."[116]

In opposition to the other commenters regarding the existence of and potential for new competitors in the FSS market, Intelsat views the satellite industry as increasingly competitive.[117] It argues that fleet operators – *e.g.,* SES, Telesat, Eutelsat – and regional providers – *e.g.,* Hispasat (Brazil), Ciel (Canada), Quetzsat (Mexico) – are part of a competitive market that will grow more competitive with Colombia, Bolivia, and Venezuela planning or having launched new satellite systems.[118] ARTEL explains, however, that none of the new or planned satellites mentioned by Intelsat will ease the need for additional space segment to support communications between the United States and remote points outside the western hemisphere. ARTEL argues that none of the satellites mentioned by Intelsat offers even a single megahertz of C-band space segment capable of supporting intercontinental communications. ARTEL further argues that the satellites listed by Intelsat as evidence of competition have only a handful of aggregate Atlantic Ocean Region and Pacific Ocean Region orbital locations. As a result, ARTEL argues that the operators that do not currently serve intercontinental routes would be prevented by 2-degree spacing limitations from securing viable AOR or POR locations.[119] ARTEL further contends that no "alternative intercontinental fleet of geostationary satellites" has been launched in the last ten years; and that regional satellite systems that serve a narrower footprint occupy the majority of orbital positions capable of supporting intercontinental satellites. Moreover, ARTEL concludes that it is unlikely that orbital locations held by regional systems will become available in the future.[120]

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[115] Spacenet at 2-4.

[116] Spacenet at 4. Spacenet further contends that all but one of the 20 Ku-band orbital locations assigned by the Commission in this section of the arc have been assigned to Intelsat or SES Global.

[117] Intelsat at 6-7.

[118] *Id.* Intelsat notes that in 2009 SES began providing commercial service on two new satellites, and OverHorizon is launching a Ku-band satellite that will provide broadband services. *Id.* at 7.

[119] ARTEL Comments at 7-9.

[120] *Id.* at 11-12. ARTEL maintains that even if such orbital locations were available, it would take at least 3 to 4 years for a new entrant to construct and launch a satellite, even assuming that all the approved frequencies would be available from the abandoned location.

iii. The Role of Integrators/Network Service Providers and Allegations of Anticompetitive Behavior

CapRock explains that the international FSS market may be viewed as having three principal categories: (1) satellite space segment capacity provided by global operators such as Intelsat; (2) subscription services (with or without bundled equipment); and (3) fully-managed, end-to-end network services.[121] The third category reflects the type of services provided by companies such as ARTEL, CapRock, and Globecomm. These providers maintain that in order to offer competitive, market-based solutions for their customers, they must be able to "secure space segment capacity from a mix of regional and global satellite operators so as to optimize coverage and capability."[122] Accordingly, to the commenters, Intelsat's control over a large percentage of FSS serving North America means that, in many cases, it is "impossible" for a competitor to provide global satellite communications services without using some Intelsat capacity.[123] In addition, ARTEL, CapRock, and Globecomm allege that Intelsat's anticompetitive actions are preventing them from accessing Intelsat capacity, to the detriment of some of their end users who are performing critical functions for various U.S. government agencies.[124]

CapRock, Globecomm, and ARTEL all allege anticompetitive behavior by Intelsat that is facilitated through Intelsat General (IGEN), an Intelsat wholly-owned subsidiary.[125] The commenters describe IGEN as the wholesale provider and retail customer of Intelsat services, *i.e.*, it serves as both the "sole point of contact for independent distributors seeking access" as well as a competitor for the same customers in the same market.[126] They allege that IGEN makes Intelsat more "vertically integrated," *i.e.,* through IGEN, Intelsat has direct access to customers and directly competes for Intelsat space segment capacity against CapRock, ARTEL, and Globecomm and similar competitors.

ARTEL alleges, but does not provide greater detail, that IGEN has refused to provide space segment capacity pricing to competitors seeking that same space segment for an identical project and that IGEN has entered into exclusive arrangements with other satellite operators that "prevent or discourage" those operators from working with competitors to IGEN.[127] Globecomm

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[121] CapRock at 3.

[122] *Id.*

[123] CapRock at 9-10.

[124] *E.g.,* Department of Defense, U.S. Army, U.S. Air Force, Department of Energy, U.S. Space Command, Intelligence Agencies, Federal Aviation Administration, General Services Administration, and Federal Emergency Management Agency.

[125] ARTEL Comments at 5. IGEN was created when Intelsat acquired Comcast General Corp. and PanAmSat's G2 Satellite Solutions Division. Globecomm at 5. In Intelsat's 2009 annual report to the Securities and Exchange Commission, Intelsat described IGEN at a *"government business subsidiary." http://www.sec.gov/Archives/edgar/data/1156871/000119312510051611/d10k.htm*

[126] ARTEL Comments at 4-5.

[127] ARTEL Comments at 5-6.

alleges, but does not provide a specific example, that IGEN receives preferable rates from Intelsat.[128]

CapRock cites two specific allegations of Intelsat anticompetitive behavior. The first relates to IGEN's role as both supplier and competitor, *i.e.*, competitors to IGEN are required by Intelsat to purchase satellite capacity for government-related projects through IGEN – even where IGEN is bidding directly against that competitor.[129] CapRock contends that on one particular bid, Intelsat and IGEN required all bidders to accept "a pre-engineered space segment solution from IGEN,"[130] even though all bidders possessed their own facilities and were capable of designing their own solutions. CapRock indicates that the "forced bundle" was expensive and technically "suboptimal."[131] CapRock further maintains that IGEN did not utilize the forced bundle in its own bid but that CapRock and other competitors were required to use the bundle if they wanted to access Intelsat space segment capacity.[132] The second involves the Defense Information System Network Satellite Transmission Services-Global Contract (DSTS-G).[133] Under this contract – which was awarded in 2001 to CapRock, ARTEL, and a third contractor[134] – no "satellite fleet operator" (*e.g.,* Intelsat) was able to sell directly to the Department of Defense. [135] This two-tiered structure, according to CapRock, is supposed to spur "market creativity, maintain price competitiveness, and ensure security."[136] CapRock alleges, however, that in order to "gain greater control over the outcome of every possible satellite capacity procurement," IGEN implemented a number of measures to favor one prime contractor over another for any given task. As a result, this "Incumbent Pricing Policy" essentially gives a more favorable price to the incumbent on the task order under "re-competition."[137] Thus, IGEN can "pre-ordain" which

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[128] Globecomm Comments at 3-4.

[129] Caprock.at 9. CapRock contends that IGEN's position as both competitor and supplier has inhibited competition and is ultimately detrimental to end-users. As a result of IGEN's position, ARTEL contends that IGEN has access to proprietary pricing and other details provided by ARTEL and similar competitors. ARTEL Comments at 6.

[130] Caprock at 10.

[131] According to CapRock, the forced bundle required use of some satellites that would reach the end of their lives prior to the expiration of the contract. *Id*.

[132] *Id.* at 10-11.

[133] The DSTS-G is the "primary vehicle by which the DOD and Defense Information Systems Agency (DISA) purchase satellite space segment. *Id.*at 8. CapRock states that a DOD report on commercial satellite expenditures concluded that satellite bandwith procured under DSTS-G was up to 40 percent lower because prime contractors could exercise flexibility in the marketplace. *Id.*at 4.

[134] All three awardees were "prime contractors." *Id.*at 8.

[135] This was an IDIQ (Indefinite delivery / indefinite quantity contract). IDIQ contracts allow for an indefinite quantity of supplies or services during a fixed period of time. *See* Federal Acquisition Regulation § 15.501(a).

[136] CapRock at 9.

[137] *Id.*

prime contractor will receive the award by "fixing the Intelsat space segment prices being offered to the three prime contract bidders."[138]

In addition, CapRock alleges that Intelsat has retaliated against it for raising these competitive concerns by refusing to quote prices for satellite capacity to CapRock in two instances. Instead, CapRock was required to get quotes from IGEN, with prices that CapRock describes as being far above market rates.[139] ARTEL alleges that IGEN has retaliated against and intimidated those distributors that compete against it directly.[140]

Intelsat views these allegations as efforts to "inappropriately … use the instant proceeding as a forum to hobble Intelsat as a privatized competitor and to restore the regulation in U.S. markets to which" Intelsat was previously subject.[141] Intelsat states that the "limited purpose" of the ORBIT Act Report is to "provide a report to Congress to confirm that Intelsat now operates in the satellite marketplace as a fully privatized company."[142] Intelsat contends that because the allegations are not based on Intelsat's former status as an IGO and because these comments are an "inappropriate attempt to inject the FCC into ongoing commercial disputes," the comments should be dismissed.[143]

iv. Scope of the Report and Legacy Issues

Intelsat states that the purpose of the ORBIT Act "is to promote a fully competitive global market for satellite communications services … by fully privatizing … Intelsat and Inmarsat."[144] According to Intelsat, this means that the "sole criteria" for determining whether the Orbit Act's purpose has been met is whether Intelsat "operate[s] as an independent commercial entity and [has] a pro-competitive ownership structure," both of which Intelsat contends have been clearly achieved.[145] Similarly, the "limited purpose" of the ORBIT Act Report, according to Intelsat, is to inform Congress whether Intelsat and Inmarsat "have been

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[138] *Id.*

[139] *Id.* at 11. Globecomm and ARTEL also state that Intelsat has retaliated against competitors that have complained about such practices, but neither offers specifics regarding the alleged retaliation. Globecomm Comments at 4; ARTEL Comments at 6.

[140] *Id.* at 5-6.

[141] Intelsat at 2.

[142] *Id.* at 1.

[143] *Id* at 3, 9. In its surreply, ARTEL notes that Intelsat does not deny ARTEL's allegation that IGEN engaged in "several anticompetitive and discriminatory actions," including denying access to the Intelsat fleet to those that have competed against IGEN; retaliating against competitors by refusing to provide pricing and terms for "ongoing, established space segment leases"; asking that competitors not bid on projects of interest to IGEN and denying pricing for those competitors that do not comply; and entering into exclusive relationships that prevent or discourage those operators from working with IGEN's competitors. ARTEL Surreply at 2-3.

[144] Intelsat at 2-3.

[145] *Id.* at 3.

fully privatized and now compete on a level playing field." Intelsat concludes that any recommendations made by the commenters that Intelsat be required to implement pre-privatization business practices (*e.g.*, file tariffs or not have direct access to customers) exceed the scope of the ORBIT Act.

Intelsat argues that privatization was "intended to end the separation of Intelsat from end-users and permit Intelsat to compete in the same manner as all other satellite providers" by making "pricing proposals responsive to private and government user needs based on Intelsat's own business judgment."[146] Intelsat sees no need for it to be regulated as a "public utility" because the FCC already regulates Intelsat's service on "thin routes."[147] Intelsat is subject to FCC regulation, and on those routes, Intelsat still offers switched-voice, private line and occasional-use video services pursuant to tariff.[148] Intelsat maintains that to force it to operate as a common carrier or to provide "uniform prices on all routes" would significantly reduce its ability to compete against other providers.

ARTEL states that the ORBIT Act "directs the Commission to 'condition or deny' authority sought by [Intelsat] … to the extent necessary to protect competition in the commercial satellite market."[149] Further, ARTEL contends that the Commission must, as the notifying administration, ensure that Intelsat, pursuant to the ITSO Treaty, provide "non-discriminatory access to legacy fleet assets."[150] ARTEL and Globecomm further note that Intelsat no longer publishes tariffs for every space segment, provides transponder guides and contour maps, or sells capacity on a bit rate basis. ARTEL and Globecomm views these failures as anticompetitive.

Intelsat, however, also disagrees with the commenters' conclusion that the Public Services Agreement (PSA) between ITSO and Intelsat requires the Commission to regulate Intelsat pricing. Intelsat also disagrees that the "core principle" of non-discriminatory access in the PSA provides any "basis for additional Commission regulation."[151] With regard to the PSA and pricing, Intelsat contends that "the PSA is a private contract, uniquely enforceable by ITSO under arbitration procedures."[152] With regard to ITSO and non-discriminatory access, Intelsat contends that non-discriminatory access is a "safeguard against governments foreclosing Intelsat from serving certain national markets and thus impairing global connectivity and coverage," and

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[146] *Id.* at 4.

[147] Thin routes are those not yet shown to have competitive alternatives.

[148] *Id* at 4-5.

[149] ARTEL Comments at 2. Globecomm agrees that Intelsat's behavior is in violation of its obligation under the ITSO Agreement that requires Intelsat to provide non-discriminatory access Intelsat's system. Globecomm Comments at 5.

[150] ARTEL at Comments 2. ARTEL states that Intelsat licenses were modified by the Commission to require that "Intelsat remain a party to an agreement between Intelsat and ITSO that governed Intelsat's conduct and ensured that it follow the 'core principles' of global connectivity … and non-discriminatory access."

[151] *Intelsat* at 6.

[152] *Id.* at 5.

is therefore unrelated to Intelsat pricing or commercial relationships with customers such as ARTEL.[153]

v. Commenters' Proposals

ARTEL and CapRock both urge the Commission to initiate a review of the structure of the FSS industry, specifically addressing their concerns about Intelsat's market power, and consider adopting new polices to address their competitive concerns.[154] Globecomm requests that the Commission take action to ensure "non-discriminatory access to Intelsat's system."[155] Spacenet suggests that the Commission consider rule changes to promote competition in domestic transponder capacity.[156]

As part of its examining the FSS market, ARTEL suggests that there is a need for greater transparency regarding the terms under which U.S. providers gain access to satellite capacity; a review of Intelsat's obligation to provide transparent and non-discriminatory access; and the consideration of appropriate enforcement and regulatory mechanisms to deal with collusion, intimidation, price fixing, and other deleterious behavior.[157] ARTEL suggests that, as part of this inquiry, the Commission consider the creation of a separate wholesale channel, additional license conditions, and divestiture of vertically integrated assets such as IGEN.[158]

CapRock asks that the Commission initiate comprehensive reform of its policies governing the assignment of rights of use of orbital locations, with the goal of enabling innovation in international satellite communications and encouraging the deployment of newer, more efficient space stations. CapRock asks that the Commission review its policies for assigning orbital locations and that authorization to operate space stations at orbital locations be periodically reviewed. CapRock also suggests that such review provide for the orbital locations being made available to other operators in the event that it is not being utilized in an efficient manner.[159] In addition, CapRock also requests that, in the ORBIT Act Report, the Commission recommend a review of Intelsat/IGEN's role in the provision of satellite services.[160]

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[153] *Id.* at 6.

[154] ARTEL also states that it is not requesting that the Commission take action on these recommendations in the proceeding, but requests that its proposed remedies be included in this Report. ARTEL Surreply at 10.

[155] Globecomm Comments at 6.

[156] Spacenet at 7-8.

[157] ARTEL Comments at. i-ii, 14-17.

[158] *Id.* at 16-17.

[159] CapRock suggests that the incumbent be required to demonstrate that replacement satellites add meaningful incremental bandwidth capacity to maintain their orbital slots. CapRock at 15.

[160] CapRock at 17. Outside the scope of the ORBIT Act Report, CapRock requested that the Commission initiate an enforcement action against Intelsat and IGEN relating to the imposition of a "forced bundle" and implementation of their "incumbency pricing policy;" and initiate a proceeding to establish safeguards and procedures to isolate IGEN from inquiries and transactions relating to Intelsat space segment supply.

Globecomm suggests that the Commission take active steps to clarify Intelsat obligations as a signatory to the PSA between Intelsat and ITSO and to ensure that Intelsat satisfies such obligations and establish procedures for addressing noncompliant behavior.[161] Globecomm also recommends that Intelsat only be able to enter the market for competitive facilities through a fully separate subsidiary, and that any Intelsat subsidiary only be able to acquire transponder capacity from Intelsat on a tariffed basis.[162]

Spacenet requests that the Commission reassess its rules and policies with respect to orbital assignments, to promote competition in the market for domestic transponder capacity and to assure continuity of service for data network operators and their customers.[163]

Intelsat rejects the commenters' proposals as not suitable for a fully privatized entity. In particular, Intelsat states that some of the proposals suggested by the commenters would preclude Intelsat from competing for end-user business and hamper its ability to adjust pricing to be responsive to user needs.[164]

IV. Impact of Privatization

Section 646 requires that the Commission report on the impact of privatization on U.S. industry, jobs, and industry access to the global market.

A. Inmarsat

Inmarsat's privatization appears to have had a positive impact on the domestic market.[165] In its comments, Inmarsat states that it has continued to invest in new technologies for mobile satellite service customers.[166] As an example of this investment, Inmarsat points to its $1.5 billion investment in its fourth-generation (I-4) satellite network, which is designed to support mobile broadband services, including its BGAN service.[167] Inmarsat launched the third satellite in the I-4 network in 2008 completing fourth-generation worldwide coverage. Inmarsat states that its BGAN service is being utilized in innovative ways by its customers, including in response

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[161] Globecomm Comments at 6. Globecomm suggests that complaint procedures similar to those in 47 U.S.C. § 208 be established, and that the Commission require transparency with regard to rates, terms, and conditions of service provided by Intelsat to its affiliates.

[162] *Id.* at 7.

[163] Spacenet at 7-8.

[164] Intelsat at 4.

[165] Inmarsat is the only commenter that discussed the impact of Inmarsat's privatization.

[166] Inmarsat at 2.

[167] *See* fn. 48, *supra.* BGAN provides voice and broadband service with speeds of almost half a megabit per second using "notebook sized" antennas that are one-third the size, weight and price of traditional Inmarsat antennas. *See* Inmarsat at 2. Inmarsat has also offered similar services to its aeronautical and maritime customers under the names SwiftBroadband and FleetBroadband. *Id.* at 3-4. Other new services are described in Inmarsat's Comments. *Id.* at 4-5.

to recent natural disasters.[168] As another example of its innovative technologies, Inmarsat plans to introduce a worldwide Global Satellite Phone Service ("GSPS") over its I-4 satellite network. GSPS will support telephony, short message service, fax, data, voicemail, text, email, and location data. Additionally, Inmarsat remains committed to its support of global maritime distress and safety services ("GMDSS").[169]

B. Intelsat

INTELSAT's privatization from an intergovernmental organization to a fully commercial operation has enabled it to more effectively compete to provide services to U.S. commercial and governmental customers. The privatization of INTELSAT, in 2001, enabled it to compete freely for U.S. satellite business opportunities, led to more competitive choices in the U.S. market than existed before privatization, and continues to encourage the development of service offerings to U.S. customers. As noted above, however, firms that are both competitors and customers of Intelsat have submitted comments in the record of this report that question whether certain practices of Intelsat post-privatization are anti-competitive.

Comments received for the 2010 ORBIT Act Report express contrasting views on the impact of the privatization of Intelsat.[170] Intelsat concludes that the privatization goals of the ORBIT Act have been fulfilled because Intelsat no longer claims the privileges and immunities of an intergovernmental organization, is neither owned nor controlled (directly or indirectly) by any government or former signatory, and is regulated by the Commission on the same basis as other providers of satellite services.[171] Intelsat states privatization continues to have a positive impact on the global marketplace for communications services.[172] Intelsat further states that it remains committed to ensuring continued global connectivity and service to countries dependent on Intelsat's satellite services. The other commenters disagree with Intelsat's conclusion that privatization has resulted in a competitive FSS marketplace. These commenters do not agree that the goals of the ORBIT Act have been achieved solely because Intelsat is no longer an IGO.

In 2008, the Commission took action to ensure that Intelsat remains committed to ensuring continued global connectivity and service to countries dependent on Intelsat's satellite services. The Commission conditioned Intelsat's licenses to require that Intelsat remain a signatory to the Public Services Agreement between Intelsat and ITSO that was approved by the ITSO Twenty-

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[168] For example, Inmarsat states that it and its distribution partner, Vizada, donated 70 BGAN terminals to the International Telecommunication Union to help countries prepare for and respond during disasters, and the BGAN technology was used by a number of agencies in response to the earthquake in Haiti. *Id.* at 3.

[169] *See Inmarsat PLC Annual Report and Accounts 2009* at 12, available online at http://www.inmarsat.com/Downloads/English/Investors/Inmarsat_Annual_Report_2009.pdf?language=EN&textonly=False.

[170] For a more complete discussion of the comments received in this proceeding, see Section III, *supra*.

[171] Intelsat Reply at 1-2.

[172] *Id.* at 6-8, citing SES, Telesat, Eutelsat and Intelsat as competing with integrated systems of multiple satellites, as well as several current regional service providers, including Hispasat (Brazil), Ciel (Canada) and Quetzsat (Mexico) and several planned or newly launched systems (Colombia, Venezuela and Bolivia).

fifth Assembly of Parties.[173] The Commission also conditioned Intelsat's licenses to provide that no entity can be considered a successor-in-interest to Intelsat under the ITSO Agreement unless the entity has undertaken to perform the obligations of the Public Services Agreement.

V. Summary

As discussed above, many far-reaching complaints and recommendations have been presented for consideration here since the Public Notice comment period closed at the end of April 2010.[174] Going forward, the Commission will consider the appropriate options for addressing those issues raised by the commenting parties and Intelsat that are within our jurisdiction under the ORBIT Act and other laws. In the interim, the Commission will continue to implement and enforce the requirements of the ORBIT Act. The Commission will also continue to inform Congress of the actions it takes to implement the requirements of the ORBIT Act and the impact of those actions in its next annual report.

[173] Petition of the International Telecommunications Satellite Organization under Section 316 of the Communications Act, as Amended, *Order of Modification*, 23 FCC Rcd 2764, 2770 (Int'l Bur., 2008).

[174] *See* fn. 103, above.

APPENDIX

Index of Filings:

Comments, filed April 7, 2010

Comments of Inmarsat PLC, available at
http://fjallfoss.fcc.gov/ecfs/document/view?id=7020406671

Comments of Spacenet Inc., available at
http://fjallfoss.fcc.gov/ecfs/document/view?id=7020408222

Comments of CapRock Communications, Inc., available at
http://fjallfoss.fcc.gov/ecfs/document/view?id=7020408252

Comments of ARTEL, Inc., available at
http://fjallfoss.fcc.gov/ecfs/document/view?id=7020408259

Comments of Globecomm Systems Inc., available at
http://fjallfoss.fcc.gov/ecfs/document/view?id=7020408174

Reply Comments, filed April 21, 2010

Reply Comments of Intelsat LLC, available at
http://fjallfoss.fcc.gov/ecfs/document/view?id=7020409961

Surreplies, filed April 28, 2010

Surreply of Globecomm Systems, Inc., available at
http://fjallfoss.fcc.gov/ecfs/document/view?id=7020442163

Surreply of ARTEL, Inc., available at
http://fjallfoss.fcc.gov/ecfs/document/view?id=7020442284